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SUBJECT: UN/1267 SANCTIONS: COUNCIL CONSIDERS NON-COMPLIANCE

REF: KONZET-CROWE EMAIL 4/10/2008

Classified By: Deputy Political Counselor Molly Phee, for reasons 1.4 (B) AND (D)

11. (C) SUMMARY: Belgian PermRep and Chairman of the 1267 (al-Qaeda/Taliban) Sanctions Committee Johan Verbeke briefed the Council on April 24 on issues related to non-compliance with the 1267 sanctions regime. The Committee's discussions of specific instances of possible non-compliance were inconclusive, due largely to Indonesia's refusal to concede that any of the cases before the Committee were in fact violations of the sanctions regime. In his remarks to the Council, Indonesian PermRep Marty Natelegawa assured the Council of Indonesia's commitment to the sanctions regime, but argued (supported by South African PermRep Dumisani Kumalo) that non-compliance did not reflect a lack of will on the part of member states, but rather domestic legal deficiencies that prevented them states from implementing the sanctions. Natelegawa added that the lack of "fair and clear" procedures in the Committee had given rise to an increasing number of legal challenges to states' implementation of the sanctions (see septel). USUN, the UK, and France made strong statements about the need for states to implement their Council obligations, and for the Committee to continue to identify cases of non-compliance and to follow up with appropriate action. END SUMMARY.

12. (C) Belgian PermRep and Chairman of the 1267 (al-Qaeda/Taliban) Sanctions Committee Johan Verbeke briefed the Council on April 24 on the Committee's work in addressing non-compliance with the 1267 sanctions regime. Ambassador Verbeke's report (ref email) explained that the purpose of the Committee's consideration of this subject was to "improve the effectiveness and implementation of the sanctions regime by reducing the instances of non-compliance." The report did not, however, reflect the contentious nature of the Committee's discussions, nor convey a position on how the Committee or the Council should respond to cases of non-compliance. (Comment: The report's content thus reflected the lack of consensus in the Committee on how to treat non-compliance, but it also did not clearly reflect the U.S. position, supported by the UK and France, that the Committee should be taking action on cases of sanctions violations as they come to its attention. End Comment.)

BACKGROUND: COMMITTEE DISCUSSION ON NON-COMPLIANCE

13. (C) Resolution 1735 (2006) mandated the Committee to identify cases of non-compliance and to report to the Council on its findings. Over the course of several meetings the Committee considered individual instances of non-compliance as well as broader issues that hinder states' full implementation of the regime, such as lack of capacity or domestic legal challenges to sanctions implementation. In its consideration of specific allegations of non-compliance,

Indonesia, and to some extent South Africa, was resistant to investigating possible non-compliance or naming states as non-compliant, preferring instead to focus discussion on the challenges states face in implementing the sanctions.

¶4. (C) For example, Indonesia refused to recognize that any of the cases before the Committee were even possible instances of non-compliance, including the case of Hassan Dahir Aweys, a Somali national designated for sanctions who has traveled openly to Eritrea where he has been seen in public by U.S. Embassy officials. Indonesia did not, however, block a letter from the Chairman to Eritrea in February seeking further information on Aweys' presence there. In other instances, citing its geography, Indonesia argued that a state could not be considered to be non-compliant if a listed person had entered its territory using false documentation or by illegally crossing the border. (Note: The travel ban requires that a state prevent the entry into its territory of a listed individual, and does not qualify that obligation in any way. End Note.) The Committee was thus unable to agree to a standard of action in response to non-compliance, and this impasse was reflected in the fact that Ambassador Verbeke's report to the Council made no reference to enforcement of sanctions implementation.

#### USUN, UK, AND FRANCE TAKE A FIRM POSITION ON NON-COMPLIANCE IN COUNCIL BRIEFING

¶5. (C) Following Ambassador Verbeke's report to the Council, UK PermRep John Sawers argued that though many cases of non-compliance will not reflect malign intent to violate the sanctions, the Committee must nonetheless follow up to ensure that states fully understand their obligations under the

sanctions regimes. Furthermore, the Committee has an obligation to uphold the Council's decisions, and should not be engaging in liberal interpretations of the resolutions when considering issues related to non-compliance. Sawers stated the UK recognizes the challenges that states face in fully implementing the regime, and expressed concern that domestic legal challenges would continue to threaten sanctions implementation. He added that Committee should consider how to deal with deceased persons that still appear on the sanctions list.

¶6. (C) USUN Political Counselor Jeff DeLaurentis echoed Ambassador Sawers, asserting that the Committee must continue to identify instances of non-compliance and to be prepared to follow up with appropriate action. While acknowledging that states face challenges, DeLaurentis underscored that the Committee's goal must be preserving its authority and defending the decisions of the Council. French Political Counselor Nicolas de Riviere too urged further work and vigilance on non-compliance, and stressed the obligations of all states to implement Council decisions, adding that the Committee should also keep its focus on improving the quality of the list. Russian Counselor Vladimir Safronkov briefly argued that the Monitoring Team and Chairman must bring all cases of non-compliance to the committee impartially. China opined that non-compliance was partly due to states' lack of legislation and capacity, and said the international community must offer capacity assistance to those countries in need.

¶7. (C) Indonesian PermRep Marty Natelegawa stated that Indonesia has an unwavering commitment to the implementation and credibility of the sanctions regime and to improving the sanctions list, pointing to the GOI's national workshop on the 1267 regime, convened in coordination with the Monitoring Team, as evidence of the seriousness of their implementation efforts. He stated that Indonesia believed that identifying cases of non-compliance had been a useful exercise in addressing obstacles to implementation, but urged that in its future considerations of non-compliance the Committee should also consider states' domestic efforts to deal with al-Qaeda, in particular through criminal law enforcement in southeast Asia.

18. (C) Natelegawa added that it was important to recognize that non-compliance was not due to a lack of will on the part of member states, but more to legal deficiencies that prevented states from implementing the sanctions. However, in Indonesia's view, the Committee's procedures are not "fair and clear," and as a result states face an increasing number of legal challenges when attempting to implement the sanctions. Natelegawa urged the Council to consider developing further procedures to ensure the rights of listed parties, in particular the right to be heard and to an independent review of their listing.

19. (C) South African PermRep Dumisani Kumalo also argued that lack of compliance could not be construed as a states' desire not to comply with the sanctions regime, and added that once the Committee allowed listed parties the right to a review, states would face less domestic legal pressure. Vietnam recognized member states' obligations, but urged that the Council should also be mindful of the challenges states face, and advocated a prudent approach<sup>8</sup> in responding to cases of non-compliance. Italian PermRep Marcello Spatafora said that Italy too faced challenges with implementation, and agreed with Indonesia and South Africa that non-compliance may not be the result of lack of political will, but rather of lack of the appropriate domestic legal tools. Burkina Faso PermRep Kafando noted that since the responsibility to implement the sanctions falls to states, the Council should also emphasize technical assistance to ensure that states can fulfill their obligations.

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